

Bufford's claims under Title VII and 42 U.S.C. § 1981 are legally and factually sufficient to state a claim against Embarq. Thus, Embarq's motion to dismiss those two claims is denied. However, Bufford's claim against Embarq under N.C. Gen. Stat. § 143-422.2 does not state a claim upon which relief can be granted. Simply put, N.C. Gen. Stat. § 143-422.2 does not create a private right of action. See, e.g., McLean v. Patten Cmty's., Inc., 332 F.3d 714, 719 (4th Cir. 2003); Smith v. First Union Nat'l Bank, 202 F.3d 234, 247 (4th Cir. 2000); Bratcher v. Pharm. Prod. Dev., Inc., 545 F. Supp. 2d 533, 544 (E.D.N.C. 2008); Roberts v. Wal-Mart Stores, Inc., 503 F. Supp. 2d 787, 788-89 (E.D.N.C. 2007); Mullis v. Mechs. & Farmers Bank, 994 F. Supp. 680, 687 (M.D.N.C. 1997). Moreover, to the extent that Bufford seeks relief under North Carolina law for the tort of wrongful discharge in violation of public policy and cites section 143-422.2 as the public policy source, the claim fails. The tort requires a discharge. By definition, the tort does not apply to applicants. See, e.g., Garner v. Rentenbach Constructors Inc., 350 N.C. 567, 568-73, 515 S.E.2d 438, 439-42 (1999); Imes v. City of Asheville, 163 N.C. App. 668, 670-71, 594 S.E.2d 397, 398-99, aff'd, 359 N.C. 182, 606 S.E.2d 117 (2004) (per curiam); Ridenhour v. IBM Corp., 132 N.C. App. 563, 568-69, 512 S.E.2d 774, 778 (1999); Gravitt v. Mitsubishi Semiconductor Am., Inc., 109 N.C. App. 466, 472, 428 S.E.2d 254, 258 (1993).

In sum, Embarq's motion to dismiss [D.E. 22] is GRANTED in part and DENIED in part. Bufford's claim under N.C. Gen. Stat. § 143-422.2 is DISMISSED with prejudice. Bufford's claims under Title VII and 42 U.S.C. § 1981 may proceed.

SO ORDERED. This 10 day of December 2010.


JAMES C. DEVER III
United States District Judge